

## **REMARKS**

In this response to the above identified Office Action, Applicants respectfully request reconsideration in view of the above amendments and the following remarks. Claims 12, 23, 25-37, and 47 have been amended. No claims have been cancelled or added. Accordingly, claims 1-48 are pending in the application.

### **I. Claims Allowed**

Applicants note with appreciation that claims 10 and 37 are allowed.

### **II. Objection to the Disclosure and Claims**

Claims 12, 13, 23, 24, 35, 36, 47, and 48, as well as the disclosure in regards to these claims, stand objected to because the terms “MDL” and “FDL” should be spelled out in full text as disclosed in Applicant’s specification. These terms are in fact spelled out in paragraph 0065 of the application as “maintenance data links” and “facility data links,” respectively. Applicants have amended claims 12, 23, 35, and 47 to spell out the terms at their first appearance in each claim set. Accordingly, reconsideration and withdrawal of the objections to the disclosure and these claims are requested.

### **III. Claims Rejected Under 35 U.S.C. § 101**

Claims 25-37 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Applicants have amended claims 25-37 as suggested by Examiner. Accordingly, reconsideration and withdrawal of the rejection to these claims are requested.

### **IV. Claims Rejected Under 35 U.S.C. § 102**

Claims 1, 2, 4, 5, 8, 9, 11, 14, 15, 18-20, 22, 33, 38, 39, 42-44 and 46 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,810,031 issued to Hegde et al.

(hereinafter “Hegde”). Although on page 3 of the Office Action, Examiner denotes claim 32, instead of 33, as being rejected under § 102(b), it is presumed that Examiner intended to refer to claim 33, as is evident in the discussion on pages 4-5 of the Office Action. Applicants respectfully disagree with the above claim rejections for the following reasons.

To anticipate a claim, a single reference must disclose each element of that claim. Claims 1 and 8 include “transferring data on a first port during a current cycle until a predetermined number of bytes less an overshoot value for the first port has been transferred on the first port” and “continuing to transfer data on the first port during the current cycle until a complete packet has been transferred on the first port” (emphasis added). Applicants believe that Hegde does not teach these elements of claims 1 and 8. Although Hegde teaches “determining an allowable number (A) of data bytes for transmission during a cycle” (col. 15 lines 5-6) and “any extra number [(C)] of data bytes also allowed” (emphasis added) (col. 15 lines 7-9), data bytes are transmitted only “up to A+C” (emphasis added) (col. 15 lines 10-11). This does not teach the elements of claims 1 and 8, which instead provide for an overshoot value but nonetheless continue to transfer data during the current cycle until a complete packet has been transferred, regardless of whether the number of bytes transferred exceeds the predetermined number of bytes. Therefore, Hegde does not teach each of the elements of claims 1 and 8. Accordingly, reconsideration and withdrawal of the anticipation rejection of these claims are requested.

Claims 2, 4, 5, and 9 depend from independent claims 1 and 8, respectively, and incorporate the limitations thereof. Thus, at least for the reasons mentioned above in regard to independent claims 1 and 8, these claims are not anticipated by Hegde. Accordingly, reconsideration and withdrawal of the anticipation rejection of these claims are requested.

Claim 11 includes “sequentially selecting a pair of ports from a plurality of pairs of ports wherein the pair of ports comprises a port connected to a first interface and a port connected to a

second interface" (emphasis added). Applicants believe that Hegde does not teach these elements of claim 11. Hegde merely teaches line cards (element 102) forwarding data to Internet Protocol Engine (IPE) cards (Fig. 1, col. 5, lines 15-30), and there is nothing in the cited reference that teaches or suggests any sort of sequential selection of any pair of ports. Therefore, Hegde does not teach each of the elements of claim 11. If Examiner maintains this rejection of claim 11, Applicants respectfully request that Examiner clarify how the cited sections teach these elements of claim 11. Accordingly, reconsideration and withdrawal of the anticipation rejection of claim 11 are requested.

Independent claims 14 and 38 include elements similar to those of independent claims 1 and 8, including "transferring data on a first port during a current cycle until a predetermined number of bytes less an overshoot value for the first port has been transferred on the first port" and "continuing to transfer data on the first port during the current cycle until a complete packet has been transferred on the first port" (emphasis added). Thus, at least for the reasons mentioned above in regard to independent claims 1 and 8, Hegde does not anticipate each of these claims. Accordingly, reconsideration and withdrawal of the anticipation rejection of these claims are requested.

Claims 15, 18-20, 39, and 42-44 depend from independent claims 14 and 38, respectively, and incorporate the limitations thereof. Thus, at least for the reasons mentioned above in regard to independent claims 14 and 38, these claims are not anticipated by Hegde. Accordingly, reconsideration and withdrawal of the anticipation rejection of these claims are requested.

Independent claims 22 and 46 include elements similar to those of independent claim 11, including "sequentially selecting a pair of ports from a plurality of pairs of ports wherein the pair of ports comprises a port connected to a first interface and a port connected to a second interface" (emphasis added). Thus, at least for the reasons mentioned above in regard to independent claim

11, Hegde does not anticipate each of these claims. Accordingly, reconsideration and withdrawal of the anticipation rejection of these claims are requested.

**V. Claims Rejected Under 35 U.S.C. § 103**

Claims 3, 6, 7, 16, 17, 21, 25-32, 34, 40, 41, and 45 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Hegde in view of U.S. Patent No. 6,920,110 issued to Roberts et al. (hereinafter “Roberts”). Claims 12, 13, 23, 24, 35, 36, 47, and 48 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Hegde in view of Roberts and further in view of U.S. Patent No. 5,751,802 issued to Carr et al. (hereinafter “Carr”). Applicants respectfully disagree for the following reasons.

To establish a *prima facie* case of obviousness Examiner must show that the cited references, combined, teach or suggest each of the elements of the claims.

Claims 3 and 6 depend from independent claims 1 and 8, respectively, and incorporate the limitations thereof. Thus, at least for the reasons mentioned above in regard to independent claims 1 and 8, and because Examiner has not relied upon and Applicants have been unable to discern any part of Roberts that cures the deficiencies of Hegde, Hegde in view of Roberts does not teach or suggest each of the elements of these dependent claims. Accordingly, reconsideration and withdrawal of the obviousness rejection of these claims are requested.

Claims 16, 17, 21, 40, 41, and 45 depend from independent claims 14 and 38, respectively, and incorporate the limitations thereof. Thus, at least for the reasons mentioned above in regard to independent claims 14 and 38, and because Examiner has not relied upon and Applicants have been unable to discern any part of Roberts that cures the deficiencies of Hegde, Hegde in view of Roberts does not teach or suggest each of the elements of these dependent

claims. Accordingly, reconsideration and withdrawal of the obviousness rejection of these claims are requested.

Independent claims 25 and 32 include elements similar to those of independent claims 1 and 8, including “transferring data on a first port during a current cycle until a predetermined number of bytes less an overshoot value for the first port has been transferred on the first port” and “continuing to transfer data on the first port during the current cycle until a complete packet has been transferred on the first port” (emphasis added). Thus, at least for the reasons mentioned above in regard to independent claims 1 and 8, and because Examiner has not relied upon and Applicants have been unable to discern any part of Roberts that cures the deficiencies of Hegde, Hegde in view of Roberts does not teach or suggest each of the elements of these dependent claims. Accordingly, reconsideration and withdrawal of the obviousness rejection of these claims are requested.

Claims 26-30 depend from independent claim 25 and incorporate the limitations thereof. Thus, at least for the reasons mentioned above in regard to independent claim 25, Hegde in view of Roberts does not teach or suggest each of the elements of these dependent claims. Accordingly, reconsideration and withdrawal of the obviousness rejection of these claims are requested.

Independent claim 34 includes elements similar to those of independent claim 11, including “sequentially selecting a pair of ports from a plurality of pairs of ports wherein the pair of ports comprises a port connected to a first interface and a port connected to a second interface” (emphasis added). Thus, at least for the reasons mentioned above in regard to independent claim 11, and because Examiner has not relied upon and Applicants have been unable to discern any part of Roberts that cures the deficiencies of Hegde, Hegde in view of Roberts does not teach or

suggest each of the elements of these dependent claims. Accordingly, reconsideration and withdrawal of the obviousness rejection of these claims are requested.

Claims 12 and 13 depend from independent claim 11, and incorporate the limitations thereof. Thus, at least for the reasons mentioned above in regard to independent claims 11, and because Examiner has not relied upon and Applicants have been unable to discern any part of Roberts or Carr that cures the deficiencies of Hegde, Hegde in view of Roberts and further in view of Carr does not teach or suggest each of the elements of these dependent claims. Accordingly, reconsideration and withdrawal of the obviousness rejection of these claims are requested.

Claims 23, 24, 47, and 48 depend from independent claims 22 and 46, respectively, and incorporate the limitations thereof. Thus, at least for the reasons mentioned above in regard to independent claims 22 and 46, and because Examiner has not relied upon and Applicants have been unable to discern any part of Roberts or Carr that cures the deficiencies of Hegde, Hegde in view of Roberts and further in view of Carr does not teach or suggest each of the elements of these dependent claims. Accordingly, reconsideration and withdrawal of the obviousness rejection of these claims are requested.

Claims 35 and 36 depend from independent claim 34, and incorporate the limitations thereof. Thus, at least for the reasons mentioned above in regard to independent claim 34, and because Examiner has not relied upon and Applicants have been unable to discern any part of Carr that cures the deficiencies of Hegde in view of Roberts, Hegde in view of Roberts and further in view of Carr does not teach or suggest each of the elements of these dependent claims. Accordingly, reconsideration and withdrawal of the obviousness rejection of these claims are requested.

Claims 7 and 31 include “upon determining that a number of bytes transferred on a first port during a current cycle is not greater than a predetermined number of bytes less an overshoot value for the first port and a packet was not transferred by the first port during the current cycle, maintaining the overshoot value for the first port.” Applicants believe that these elements of the claims are not taught or suggested by Hegde in view of Roberts. Examiner cites Fig. 7 for “step 130, step 132’ actual level < threshold,” as teaching “a packet was transferred by the first port and maintain the overshoot value” (emphasis added) (Office Action, p. 9), in discussing the above claim elements “a packet was not transferred” (emphasis added). Even assuming that Examiner intended to address the elements of “a packet was not transferred,” it is unclear how this part of Hegde teaches a packet that was or was not transferred, or maintaining an overshoot value. The corresponding part of the specification (col. 10, lines 54-62), also cited by Examiner, explains that “it is determined whether the actual usage is less than the threshold level.” The paragraph then goes on to discuss a potential software update which bears no similarity or relation to the claim elements at issue.

Claims 7 and 31 also include “upon determining that a number of bytes transferred on a first port during a current cycle is not greater than the predetermined number of bytes less the overshoot value for the first port and a packet was transferred by the first port during the current cycle, setting the overshoot value to zero.” Applicants believe that these elements of the claims are not taught or suggested by Hegde in view of Roberts. Examiner cites Fig. 7 and col. 10, lines 23-32 for “the threshold is initially set to zero.” However, this part of the reference discusses steps to be taken, should the actual usage be greater than the current maximum (see Fig. 7, flow from step 124 to step 126). The claim elements at issue, on the other hand, include “setting the overshoot value to zero” “upon determining that a number of bytes transferred on a first port

during a current cycle is not greater than the predetermined number of bytes less the overshoot value" (emphasis added). The teachings of the reference are thus inapplicable in this discussion.

Thus, Hegde in view of Roberts does not teach or suggest each of the elements of the claims. Accordingly, reconsideration and withdrawal of the obviousness rejection of claims 7 and 31 are requested.

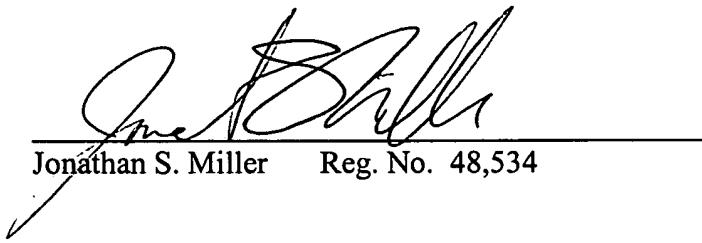


## **CONCLUSION**

In view of the foregoing, it is believed that all claims now pending, namely claims 1-48, patentably define the subject invention over the prior art of record, and are in condition for allowance and such action is earnestly solicited at the earliest possible date. If Examiner believes that a telephone conference would be useful in moving the application forward to allowance, Examiner is encouraged to contact the undersigned at (310) 207 3800.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

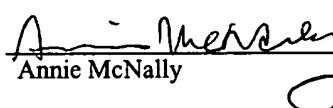
  
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Dated: January 10, 2007

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### **CERTIFICATE OF MAILING:**

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